

10/9/96

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

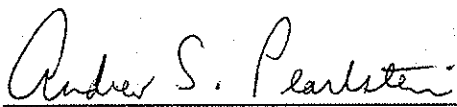
In the Matter of	)	
	)	
Britton Construction Co.; BIC	)	Docket No. CWA-III-096
Investments, Inc.; and	)	
William and Mary Hammond,	)	
	)	
Respondents	)	

ORDER ON MOTION TO HOLD RECORD OPEN

As indicated near the close of the hearing held in this matter on August 7, 1996, Respondents have moved to hold the record open in order to submit into evidence copies of tax returns of the Respondents. The tax returns are attached to Respondent's motion, dated August 14, 1996, as Exhibits A through D. Complainant has opposed the motion and moved to strike such exhibits from the record.

Respondents did clearly raise their ability to pay a penalty as an issue in their Answer and in prehearing exchanges. Rather than submit the actual tax returns, as directed by the ALJ's Prehearing Order, however, they instead submitted sworn affidavits of financial condition in their prehearing exchange and at the hearing. The actual tax returns would normally be the best evidence of financial condition, and, to the extent they are consistent with the affidavits and testimony, they would not cause any surprise or prejudice to Complainant. To the extent they may be inconsistent with the evidence at hearing, they could open up areas for cross-examination that, if sufficiently relevant to the ultimate issues that will decide this case, might require reconvening the hearing. Complainant, in its opposition to the motion, has not, however, pointed to any specific inconsistency, new matter, or other way in which it may be prejudiced by the receipt of the tax returns.

At this juncture, therefore, the tax returns will be accepted as part of the record for the purposes of the parties' post-hearing briefs and reply briefs. This ruling does not however preclude some further action taken with regard to the ultimate status of the tax returns, or reopening the record of the hearing, if some prejudice appears or it otherwise appears necessary upon my final review of the record.

  
\_\_\_\_\_  
Andrew S. Pearlstein  
Administrative Law Judge

Dated: October 9, 1996  
Washington, D.C.

In the Matter of Britton Construction Co., Inc; BIC Investments,  
Inc.; and William and Mary Hammond  
Docket No. CWA-III-096

**CERTIFICATE OF SERVICE**

I certify that the foregoing Order on Motion to Hold Record  
Open, dated October 9, 1996, was sent in the following manner to  
the addressees listed below:

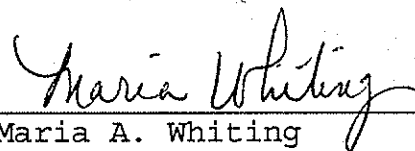
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Dated: October 9, 1996  
Washington, D.C.